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November 21, 2008

Mr. James Landon
935 Pennsylvania Avenue, NW
Washington, DC 20535

Re: FBI Docket No. 117, Proposed Rule on the National Motor Vehicle Information System

Dear Mr. Landon:

Attached are the comments of Public Citizen, Consumers for Auto Reliability and Safety, Consumer Action, and the National Association of Consumer Advocates on the above-referenced proposed rule. Our comments include the following recommendations:

- **Junk and Salvage Yards:** Consistent with the Anti-Car Theft Act's broad definitions, reporting obligations should extend to salvage pools, salvage dealers, rebuilders, certain fleet self-insureds (e.g. rental-car or fleet-leasing companies), and tow companies. The definition of junk and salvage yards should broadly construe the terms "acquires" and "owns."
- **Cars Handled By Junk & Salvage Yards:** Every automobile obtained by a salvage or junk yard from an insurance carrier should be reported, as should vehicles with known unrepaired wreck or flood damage.
- **Cars Handled by Insurers, Including Total Loss Vehicles:** Total loss vehicles must be covered by reporting requirements – not merely those *designated* as total losses, but all vehicles for which an insurer has *paid*, in whole or in part, a total loss claim. If NMVTIS is to fulfill its objectives, it is imperative that insurers not be permitted to evade reporting simply by labeling a vehicle unreportable.
- **Consumer Warnings:** It is critical that consumers be warned of any limitations in the NMVTIS database. The names of noncompliant states should be disclosed to consumers.
- **Accessibility, Cost, Expandability, and Immediacy:** NMVTIS should be as accessible and cost-free to consumers as possible; should be built for expansion, to accommodate new data as a result of changes in law or industry practice; and should allow for immediate reporting. Both reporting and consumer access must include the identities of buyers and sellers of reported vehicles.
- **Enforcement:** The Department should flatly reject the American Insurance Association's suggestion that statutory enforcement authority be weakened by adding a "flagrant disregard" standard.

Sincerely,

Deepak Gupta, Staff Attorney

**Comments of Public Citizen,
Consumers for Auto Reliability and Safety, Consumer Action, and the
National Association of Consumer Advocates on the
National Motor Vehicle Title Information System**
(Docket No. FBI 117; AG Order No. 3000-2008; 73 Fed. Reg. 54544)

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I. INTRODUCTION

Given the comparatively large number of comments from governmental and industry groups, these comments are being submitted to ensure that the interests of automobile consumers are taken into account in the Department’s rules implementing the National Motor Vehicle Title Information System (NMVTIS). As the Department is aware, this rulemaking is a direct response to litigation brought by three out of the four commenters—Public Citizen, Consumers for Auto Reliability and Safety, and Consumer Action—to compel the Attorney General to issue long-delayed rules implementing NMVTIS. *See* Order Granting Plaintiffs’ Motion for Summary Judgment in *Public Citizen v. Mukasey*, No. CV. 08-833 (MHP) (N.D. Cal. Sept. 30, 2008). We are encouraged by the Department’s progress thus far. As you

know, Congress intended NMVTIS to protect car buyers and expressly required that the public be provided access to NMVTIS at cost. 49 U.S.C. § 30502(e)(C). We are hopeful that we can work together to ensure that NMVTIS is implemented as Congress intended.

The key recommendations in these comments are summarized in the cover letter, the table of contents, and in boldfaced recommendations provided in each section. At the outset, however, we wish to stress that the final rule should accomplish the following objectives:

- lift the veil of insurance industry secrecy regarding vehicles totaled by insurers, regardless whether the titles are properly branded in compliance with state laws;
- provide more complete information regarding the prior damage history of the most hazardous, severely damaged vehicles – total loss and “salvage” cars;
- make vehicle history data from all states available to the public, at cost
- make totaled vehicle history data available to the public from salvage pools and “self-insured” entities such as car rental and leasing companies; and
- make the data more timely, by requiring it to be updated at least every 30 days.

It would be hard to overstate the importance for the American public of the widespread and immediate availability of information about the histories of severely damaged used vehicles. As the Department itself has documented, completion of NMVTIS would curb crimes involving stolen and severely damaged vehicles and save the public between \$4 billion and \$11.3 billion annually.¹ It would also prevent injuries and save lives.²

¹ *National Motor Vehicle Information System Cost Benefit Analysis*, June 2001.

² To be sure, completion of NMVTIS will also bolster efforts by federal, state, county and city law enforcement agencies to combat vehicle theft and the use of vehicles for illicit purposes, including terrorism. The focus of these comments, however, is on the impact on car buyers and the American public as consumers.

II. COVERAGE OF ENTITIES AND VEHICLES SHOULD NOT BE DILUTED.

A. Definition of “Junk Yard” and “Salvage Yard”

Recommendations: *The Department should fill the gaps in the Act by including specific, appropriately expansive definitions of “junk yard” and “salvage yard.” Salvage pools, salvage dealers, rebuilders, and certain fleet self-insureds should be explicitly covered. The Department should consider a volume standard, similar to that of the federal Odometer Act, as a gloss on the statutory term “in the business of.”*

Salvage Pools, Salvage Dealers, Rebuilders: We support the Department’s statement in the preamble that “salvage pools” are included within the scope of the definitions of salvage and junk yards. However, **coverage of salvage pools should be made part of the rules** themselves, so that it is clear that salvage pools and other entities that acquire salvage or junk vehicles are subject to reporting requirements.

Volume Standard: In addition, we suggest that the term “in the business” with respect to the definitions of salvage and junk yards, should be defined in the rules as meaning **any individual or entity meeting the description in the definition, and that acquires or owns 5 or more salvage or junk automobiles within the preceding 12 months.** This is analogous to typical volume standards to be car “dealers” under state laws and federal law (see 49 U.S.C. § 32702(2) of the federal odometer law, defining a “dealer” as “a person that sold at least 5 motor vehicles during the prior 12 months to buyers that in good faith bought the vehicles other than for resale”).

Acquires, Owns, and Obtains: The terms “acquires”, “owns”, and “obtains” in the definitions and reporting requirements should under the rules be required to be construed with the broadest practicable meaning. Taking these suggestions together, the rules would make clear that the following, for example, would be among the individuals or entities included within the definition of salvage or junk yards:

- salvage pools;
- salvage dealers;
- rebuilders;
- fleet self-insureds, such as large rental-car or fleet-leasing companies that have had at least 5 of their automobiles rendered “salvage” or “junk” within the preceding 12 months, and towing companies that acquire for themselves or own at least 5 such automobiles within the preceding 12 months.³

³ Note that, in order for an entity such as a rental car or leasing company to meet the definition of owning and selling 5 salvage vehicles within a 12 month period, it would need to have a fleet of probably hundreds of cars, because only a very small percentage of cars are

B. Automobiles Handled by Salvage Yards or Junk Yards

Recommendations: *Every automobile obtained by a salvage or junk yard from an insurance carrier should be reported, as should vehicles with known unrepaired wreck or flood damage. As to vehicles damaged by floods or wrecks, there should be a presumption that such vehicles are covered—rebuttable through a good-faith appraisal.*

Vehicles Obtained From Insurers: Every automobile obtained by a salvage yard or junk yard that the salvage yard or junk yard *knows, or has reason to know, has come from an insurance carrier, or from any person or entity in connection with the resolution of insurance claims*, shall be deemed as a salvage automobile or junk automobile and must be reported as such.”

Vehicles With Known Unrepaired Wreck or Flood Damage: We suggest that the rules also provide that there is a presumption that any automobile obtained or sold by a salvage or junk yard, and that has *known unrepaired wreck or flood damage*, is either a salvage automobile or junk automobile, and must be reported as such.

Vehicles of Unknown Physical Condition: Similarly, the rules should include a presumption that any automobile obtained or sold by a salvage yard or junk yard, *without knowledge as to the automobile’s physical condition*, is either a salvage automobile or junk automobile, and must be reported as such. This would prevent salvage yards or junk yards from maintaining an “empty head” to avoid compliance. Entities such as fleet self-insureds would not be covered by such a requirement.

Presumptions May Be Overcome By Appraisal: We suggest that these presumptions, (as to automobiles not obtained from insurers) can be overcome if and only if the salvage or junk yard has *qualified appraisal personnel employees or others acting solely on its behalf, entirely independent of any other persons or entities, perform a good-faith physical and value appraisal* of the automobile and determine that the automobile does not meet the definition of “salvage” or “junk”.

C. Automobiles Handled By Insurance Carriers

Recommendations: *Total loss vehicles must be covered by reporting requirements—not merely those designated as total losses, but all vehicles for which an insurer has paid, in whole or in part, a total loss claim. It is imperative that*

rendered salvage in a given year. (For example, if one assumes that 1% of vehicles are rendered salvage annually, such a fleet would likely exceed at least 500 vehicles.) Thus, the volume standard would ensure that only individuals or entities that are truly “in the business” of acquiring or owning junk or salvage vehicles would be covered by reporting requirements.

insurers not be permitted evade reporting simply by labeling a vehicle unreportable or by handling the vehicle indirectly.

We strongly agree with the Department's observation that the determination that an automobile has been "totaled" is the logical event that should trigger reporting by an insurance carrier. We suggest that the terms "obtained possession of" and "has decided are junk or salvage automobiles" should be construed broadly to cover automobiles handled indirectly by insurers. The statutory term "has decided" should include decisions however informal, and all occasions when in fact the insurance carrier is *as a practical matter* treating the claim as an overall vehicle loss rather than an occasion for insurance-paid repair.

Possession: "Obtained possession of" should include both *actual and constructive possession*, and "possession" should include *exercising control over an automobile directly or indirectly, through another individual or entity*.

Sale of Owner-Retained Vehicles: "Possession" should also include any occasion when an owner retains a vehicle on which a "total loss" claim is paid (an "owner-retained" vehicle), and *the insurance carrier, in the process of resolving the claim, provides information or other assistance to the vehicle owner to help the owner sell the vehicle, and so avoids directly handling the vehicle itself*. This is a common industry practice and such vehicles should be covered to the same degree as vehicles sold directly by the insurer.

Presumption Arising from Payment of Total Loss Claim: Whenever a "total loss" claim is paid by a carrier—*i.e.*, a claim is paid not for repair of an automobile but for the overall value of the automobile, less any applicable deductible or similar reduction—it should be conclusively presumed that the automobile is "salvage" or "junk" and must be reported as such.

Rationale for the Above Suggestions: Insurance carriers have long evaded various states' salvage and junk title branding laws. The financial motivation for the insurance carriers to avoid having to sell a totaled vehicle with a proper "salvage" brand is strong, and there has been little chance of insurance carriers being caught or punished for evading applicable "salvage" branding requirements.

Insurance carrier techniques for evading such laws abound:

- damage estimates are deliberately revised and written to make the dollar repair cost appear to be below a state's specified threshold (such as 70% of the vehicle's pre-accident value);
- carriers "skip" title to avoid a paper trail showing that they handled the vehicle;
- carriers move a totaled vehicle from the state where an accident occurred to a neighboring state with a higher "salvage" threshold, to make it appear that the

higher threshold applies and the vehicle is not required to be branded as salvage;

- carriers arrange for the vehicle owners to sell the totaled vehicles directly to third parties (typically rebuilders), again so that the carriers don't handle the titles;
- carriers arrange for brokers or salvage pools to receive and sell all of their totaled vehicles, again without the carriers showing up in the chain of title (an example of the "owner-retained salvage" evasion); etc.

State Farm example: In one of the best-known examples of such misconduct, State Farm Mutual Automobile Insurance Company, in January of 2005, entered into a widely-reported settlement with almost all of the states' attorneys general, admitting that it had sold tens of thousands of totaled vehicles without "salvage" and similar titles that were required by various states' laws. This happened despite the fact that on July 22, 1998, State Farm had entered into a consent judgment in Marion County, Indiana, admitting that it had done the same thing with a large number of totaled cars, and agreeing to the entry of a permanent injunction against it barring it from similar misconduct. The broadest possible construction of the terms in the Anti-Car Theft Act is necessary here to prevent harmful evasions of the reporting requirements.

III. THE SYSTEM MUST WARN CONSUMERS OF DATA LIMITATIONS.

Recommendations: *Consumers should be warned of any limitations in the NMVTIS database. The names of noncompliant states should be disclosed to consumers.*

To avoid misleading consumers, it is essential that every user—particularly consumer users—requesting information from NMVTIS be given clear and conspicuous warnings and explanations about the severe limitations in the data NMVTIS may provide about vehicles.

Experience with private vehicle-history services shows that warnings are necessary. Consumers often grossly overestimate the amount of information generally available through online vehicle history databases. Moreover, consumers may be accessing NMVTIS primarily, or exclusively, through third-party data providers. Such providers have strong commercial incentives to "oversell" to consumers just how much data would be provided by NMVTIS inquiries, to reap more profits from sales of such data to consumers.

Absent such warnings, consumers would be led by "clean" NMVTIS reports to let down their normal guard when buying used vehicles. This would make the consumers *more* likely to be defrauded when purchasing vehicles – the opposite of the purpose of the NMVTIS. We provide a sample warning box here:

National Motor Vehicle Title Information System

WARNING: This federal database does NOT have the full history of vehicles, and in fact has several major limitations (see below). You should NOT rely only on this database to identify all vehicles with major damage, odometer rollbacks or other defects. An independent inspection by your own trusted expert is still advised, BEFORE you agree to buy.

This database generally does NOT include:

- Information about serious damage to vehicles unless the vehicles were “totaled” and declared “salvage” or “junk”
- Data from states that do not participate in this system [*hyperlink for current list of states that participate*]
- Data from insurance companies, salvage pools and junkyards for damage that occurred prior to March of 2009 [*if some insurance companies are not reporting, hyperlink to list them*]
- Data about “totaled” vehicles that were not handled or reported by insurance carriers or salvage yards [*and if for any reason fleet self-insureds are not covered, then continue: large numbers of “totaled” vehicles are not insured, and those are generally not reported to the database*]
- Data about other serious problems such as mechanical defects, “lemon” buyback histories, or safety recalls that were not performed

For more information about this database and what it includes or excludes, click here [*hyperlink to more detailed information about NMVTIS that should be available on the provider’s website*]

Background on Problems with Private Vehicle-History Databases: At present, consumers generally get online history information about vehicles only through the well-known commercial databases, such as Carfax or Autocheck. Because of multi-million-dollar advertising campaigns and other extensive promotional efforts, those databases are known to a remarkably high percentage of American consumers. However, consumers have been led to the grossly mistaken impression that such databases can be relied upon to reveal any previous significant damage or odometer discrepancies. In fact, of course, those databases are full of gaping holes about the histories of vehicles, for many reasons. For example, those databases generally do not get insurance industry damage claims data, or salvage yard data (including salvage pool and fleet self-insured data), by stark contrast of course with NMVTIS. They also receive much of their data months or longer after the fact. Their other data sources are also limited in numerous other ways.⁴

Yet, to this day, a quick review of the home page of Carfax at Carfax.com, for example, shows only a fine-print disclaimer that most viewers must scroll down to see at all, and which is worded so as to give the impression that Carfax has *almost* all

⁴ With respect to odometer information, for example, a NHTSA study in 2002 showed that Carfax reports typically missed upwards of 50% of discrepancies – despite the fact that odometer data is more reliably available through public records than vehicle damage data. See NHTSA Technical Report, *The Incidence Rate of Odometer Fraud*, DOT HS 809 441, at 23-24 and tables 2-5 and 2-6.

information on every vehicle. The website overall is designed to lead consumers to believe that they are all but fully protected when they obtain Carfax reports. This is the backdrop against which consumers presently see online vehicle history databases: They expect nearly comprehensive car history data to be available from them, and they are almost entirely unaware of the severe limits of all such databases.

From our experience with fraudulent vehicle sales, we know that these conditions make a “witches brew” that causes many preventable frauds. Consumers buy millions of commercial car history reports in the attempt to avoid buying bad vehicles, and they are shown millions of “clean” reports by unscrupulous selling dealers who say that the reports prove that the vehicles have no problems. The consumers rely on these reports and let down their guard when buying vehicles (they become much less likely to have the vehicles inspected for previous damage by body technicians, for example), and they are then far more likely to go forward with the purchase of an undisclosed wrecked, flooded, or odometer-rollback vehicle. To add insult to injury, when some consumers do later learn that their vehicles have previous major damage or a rollback, and then go back to the unscrupulous sellers, the sellers then point to the “clean” database reports to “show” that the sellers had no knowledge of the defects.

Limitations of NMVTIS: While NMVTIS is in many respects far superior to existing commercial databases, particularly due to legally-mandated insurance and salvage yard data and rapid receipt and inexpensive distribution of that data, it will nevertheless be limited in its vehicle history information in several ways:

- it will generally have information only about “salvage” or “junk” damaged vehicles (which constitute under 10% of all substantially damaged vehicles that are “repaired” and resold to consumers);
- some states do not currently participate fully in NMVTIS, and some do not participate at all;
- insurance and salvage yard data from prior to March of 2009 will generally not be in the system;
- fleet self-insureds may not provide data (depending on the final rules adopted);
- the definition and determination of vehicles being “salvage” or “junk” is well short of covering all vehicles that a consumer “user” may think of as “salvage”

Require Clear and Conspicuous Warnings: The regulations, and contracts with third-party NMVTIS providers should require that all reports to consumer users of NMVTIS have *clear and conspicuous warnings and explanations* about the severe limitations in the data the NMVTIS may provide about vehicles. These should include at least the 5 points stated above (including *a list of non-participating states* and partially-participating states).

Advertising: The regulations and third-party contracts should also require that any *advertising or promotion* of any kind of a provider's sale or other distribution of NMVTIS data gives similar clear and conspicuous warnings and explanations.

Commercial users: Commercial users of NMVTIS such as *car dealers* shall as a condition of being permitted access to NMVTIS be prohibited from showing or making reference to NMVTIS reports to prospective vehicle purchasers without simultaneously providing these full written warnings and explanations directly to the prospective purchasers.

IV. NMVTIS SHOULD BE AS ACCESSIBLE AND COST-FREE TO USERS AS POSSIBLE.

Recommendations: *Consumers should be provided access either at no cost or nominal cost. Consumers should be allowed to make multiple inquiries for a fixed price. There should be no onerous access requirements. Consumers who have completed vehicle purchases should be able to verify their vehicles' history. The Department should take into account consumers' lack of access to credit and the "digital divide."*

It is essential to the purposes of the Anti-Car Theft Act that NMVTIS data be made as widely available as possible, and at minimal cost and with minimal effort being required of the NMVTIS user. The more widely the data is available, the greater the deterrent effect of the data on fraudulent and criminal practices. Minimizing cost and effort for access to NMVTIS will increase usage, which serves both to assist consumers and other users to protect themselves, and to increase the deterrent effect.

A. Cost to Consumers

Consumers must be provided access either at no cost (which would be ideal) or nominal cost. The logical price point for consumers will necessarily be low, given the limitations in NMVTIS (as noted above). If consumer access to NMVTIS costs more than this amount, the usage will be minimal, the value of NMVTIS to consumers will be minimal, and the deterrent effect will be substantially reduced.

In addition, it should be kept in mind that the consumer users will be purchasing used cars, often older and lower-priced cars. Such consumers will often be of quite limited means, and would likely avoid NMVTIS if charges were more than nominal. And it should be kept in mind that formerly salvage vehicles tend to become more dangerous with age, not less (from factors like increasing corrosion, for example). This makes the safety issues for consumers purchasing older vehicles at least as important as for consumers purchasing newer vehicles.

We urge that the Department seek a pricing structure that, if possible, permits consumer inquiries to be made for no cost charged by the operator. We note that the provision of 49 U.S.C. § 30502(c) that the operation of the system shall “be paid for by user fees” does not limit the ability of the Department to use a pricing structure such that fees paid by large-scale users will eliminate the need to charge for individual consumer inquiries. Similarly, that provision does not require that the system be paid for exclusively by user fees. Any funding from any source may thus be used to reduce or eliminate charges for consumer inquiries.

Markups by third-party providers of consumer access to NMVTIS should be carefully limited, for the same reasons. Commercial third party providers will have the ability to reach almost all Americans with word about the availability of NMVTIS data, but non-commercial providers or others that would charge minimal markups may publicize NMVTIS access little or not at all. Thus, consumers could end up hearing of NMVTIS availability only through one or two commercial third-party sources.

Similarly, third party providers should be prohibited from requiring consumers:

- to purchase NMVTIS reports “bundled” with any other item for which the providers charge;
- to accept any other inappropriate burden to get access to NMVTIS data (If, for example, a commercial vehicle history provider is a third party NMVTIS provider, it should not be able to require a consumer to purchase a more expensive vehicle history report in order to get access to the NMVTIS data.)
- to pay for a “subscriber” service of any kind, nor should it be able to require a consumer to give it personal data (except to the extent reasonably necessary to support making a credit card payment for purchase of a NMVTIS report).

Analogy to credit reports: Consumers have experienced a sad example of this sort of problem in another realm—obtaining copies of their credit reports. Although federal law has recently changed to require credit reporting agencies to give consumers copies of their credit reports free of charge, some credit reporting agencies have begun using websites with names like “freecreditreport.com” to lead consumers to think that they can get free reports there, but then require the consumers to sign on for fee-paying services (that they would have to cancel later) in order to get their “free” reports. (Only “annualcreditreport.com” actually provides truly “free” reports.)

B. Multiple Inquiries by Consumers

The typical consumer shopping for a used car will look at a number of cars, and will need history information on such cars. Because of this demand, existing commercial databases such as Carfax have allowed consumers to pay a set fee to buy

unlimited Carfax reports for a set time period, typically 30 days. Consumer users of NMVTIS will need similar unlimited short-term access to NMVTIS, again for modest or no cost. Again, if such access were not provided to consumers, this would surely cause many consumers not to use NMVTIS at all, thus defeating a primary purpose of NMVTIS.

C. Ease of Consumer Access

Any requirement that a consumer user certify that he or she is a “prospective purchaser” should be made as simple and easy as possible. We suggest that this be by simply checking an appropriate box, for example.

D. Consumer Purchaser Access

Consumers who have completed their purchases of vehicles should be able to investigate the history of their vehicles by accessing NMVTIS. These consumers are obviously even more concerned with the safety of their vehicles than are consumers who have not yet bought the vehicles. In fact, under the Drivers Privacy Protection Act (“DPPA”) information in the history of a vehicle (even personal information) “*shall* be disclosed for use in connection with matters of motor vehicle or driver safety and theft” (18 U.S.C. § 2721(b)).

We submit that there are at least two specific grounds for permitting consumer purchasers to access NMVTIS for the histories of their vehicles:

- § 30502(e)(2) does not restrict to whom data may be provided, but only how much data may be provided in response to inquiries, and current vehicle owners have even more cause for access to NMVTIS about their vehicles than do prospective purchasers;
- the DPPA already provides a separate authorization for releasing the data to consumer purchasers (and NMVTIS will in any event not be providing such personal information as social security numbers and addresses of previous owners).

E. A Note on the Lack of Credit and the Digital Divide

In developing the pricing structure for public access to NMVTIS, the Department should also consider consumers’ lack of access to credit and the nation’s existing digital divide. Many millions of vehicle purchasers lack of access to computers or credit. Currently, it is difficult if not impossible to obtain vehicle history reports from third-party vendors without using a credit card. Car buyers who lack access to data because they do not own a personal computer, lack access to credit, or choose to pay cash instead of incurring debt, should not be subjected to the sales of unsafe vehicles. For example, many teenagers and young adults who purchase used vehicles have not yet obtained a credit card. Yet they are at very high risk in vehicle crashes.

V. THE SYSTEM SHOULD BE EASILY EXPANDABLE.

We support the Department's comments encouraging insurance carriers to voluntarily report to NMVTIS additional valuable vehicle history information that they are not specifically required to provide, such as information on vehicles older than 4 years, and the reason why the insurance carrier may have obtained the vehicle. We urge that such voluntary reporting from all sources generally be encouraged by NMVTIS. For example, insurance carriers could voluntarily report their data on *all* vehicle damage claims, not just salvage or junk claims, and could provide damage dollar estimates, the nature of the damage, whether airbags deployed, whether structural damage was suffered, etc. Similarly, fleet self-insureds such as rental and leasing companies should likewise be strongly encouraged to voluntarily report their data on *all* of their vehicle damage incidents.

It is important that NMVTIS be constructed with the flexibility and expandability to handle not only such voluntary valuable reporting, but that the system is also built so as to be easily expandable in the event of changes in the law, rules, or industry practices that may cause much additional information to be reported. We also support the engineering of NMVTIS with a strong eye to the possibility that it could eventually be useable for such much larger purposes as a national electronic titling system, and/or national lien recording. We are aware that the National Auto Dealers Association and other industry groups have shown strong interest in the ultimate possibility of such national electronic titling and lien recording. We support at least thorough inquiry into those possibilities, and we can easily see how such a national system – of course with all necessary and effective consumer safeguards – could provide for much more efficient and inexpensive management of vehicle titles and liens. Such improvements hold the potential, with proper safeguards, of providing substantial cost and labor savings for consumers, dealers, and other industry participants.

VI. REPORTING TO THE SYSTEM SHOULD BE IMMEDIATE.

It is important that NMVTIS rules require the immediate and electronic reporting of data by all entities reporting to NMVTIS. The urgency of this point concerns the potential for fraudulent vehicle remarketing within even short windows of time that would be afforded by any delays permitted in reporting to NMVTIS, and the potential for VIN switching and similar criminal misconduct to be similarly encouraged by such reporting delays. It would be difficult to picture any entities in this day and age that would be covered by NMVTIS reporting requirements that would not also have their data in electronic form. Once they set up their reporting, then, it should thus be as convenient and inexpensive for all such entities to report immediately – preferably within 24 hours of the events – as to report after longer time delays.

VII. THE IDENTITIES OF BOTH SELLERS AND BUYERS MUST BE REPORTED.

Much of the trouble in the trafficking in salvage and stolen vehicles revolves around the purchasers of salvage vehicles at salvage pools. If VINs are to be switched from stolen cars, for example, the thieves need to buy matching salvage vehicles first, which they do at salvage pools and other salvage yards. Similarly, rebuilders involved in fraudulent marketing of rebuilt salvage cars have to start by buying the salvage vehicles. Investigation and prevention of such theft rings and fraudulent rebuilding operations depends in significant part on identifying the individuals and entities that purchase these salvage vehicles. To that end, it is important that buyers of salvage vehicles in particular give full and verifiable identification information to sellers when they buy the vehicles. We are aware, too, that “international” buyers are often engaged in such activities. It would be appropriate for requirements for provision of verifiable identification information by such buyers be strict. In light of that fact that salvage vehicles have even been reported by industry and law enforcement groups as having been used for terrorism purposes, this would not be an overly burdensome requirement.

VIII. THE DEPARTMENT’S ENFORCEMENT AUTHORITY SHOULD NOT BE WEAKENED.

Finally, the Department should flatly reject the American Insurance Association’s proposal that its enforcement authority be limited by a “flagrant disregard” standard. Nothing in the Anti-Car Theft Act authorizes or contemplates such a standard, and the AIA does not adequately explain why such a standard is necessary, or how it would be satisfied. Consistent with congressional intent, the Department should preserve its full enforcement authority with respect to the reporting requirements of the Anti-Car Theft Act and its implementing regulations.

ADDITIONAL REFERENCES

- Order Granting Motion for Summary Judgment in *Public Citizen, et al v. Mukasey*:
<http://www.citizen.org/documents/Order.pdf>
- Memorandum and Order in *Public Citizen, et al. v. Mukasey*:
<http://www.citizen.org/documents/OrderonDsMotion.pdf>
- Complaint in *Public Citizen, et al. v. Mukasey*:
<http://www.citizen.org/documents/NMVTISComplaint.pdf>
- Coordinating Committee for Automotive Repair. Includes the U.S. Department of Health and Human Services—Centers for Disease Control and Prevention, the U.S. Environmental Protection Agency (EPA), and other public health agencies. *Industry Concerns Regarding Handling, Disposal and Repair of Flooded Vehicles from New Orleans Following Hurricane Katrina. Analysis of risk to workers and vulnerability of persons coming in contact with submerged or flooded vehicles.* Edition 1.4, Posted: October 7, 2005.
<http://www.ccar-greenlink.org/CCAR/Statement%20on%20Flooded%20Vehicles-1.4.pdf>
- Congressional testimony provided by the Attorney General of Iowa, Consumers for Auto Reliability and Safety (CARS), the National Automobile Dealers Association, American Association of Motor Vehicle Administrators, Experian Automotive, and National Insurance Crime Bureau to the U.S. Senate Commerce Committee Subcommittee on Consumer Affairs, Product Safety and Insurance, November 16, 2005 Hearing “Protecting the Consumer from Flooded and Salvage Vehicle Fraud.”
http://commerce.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=e2e3b25e-9614-4ac7-b51e-d578398593a5
- Comments filed on November 19, 2008 by consumer organizations and the National Association of Consumer Advocates, in response to the Federal Trade Commission's Request for Public Comments⁵ regarding the Used Car Rule (60 Fed. Reg. 62, 195, December 5, 1995). Comments are posted at:
<http://www.ftc.gov/os/comments/usedcarrule/index.shtm>
- “Wrecks in Disguise: as a result of their efforts to salvage more cash from a crash, insurers have given rise to a little-known industry that sells poorly repaired cars to unsuspecting consumers” Special Report. *Consumer Reports*, January 2002.

5 73 Fed. Reg. 42285-42293 (2008).